

1 **WO**

2  
3  
4  
5  
6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA  
9

10 Jennifer L. Matthews,

11 Plaintiff,

12 vs.

13 Michael J. Astrue, Commissioner of  
14 Social Security,

15 Defendant.  
16

No. CIV 11-290-TUC-LAB

**ORDER**

17 The plaintiff filed this action for review of the final decision of the Commissioner for  
18 Social Security pursuant to 42 U.S.C. § 405(g). The Magistrate Judge presides over this case  
19 pursuant to 28 U.S.C. § 636(c) having received the written consent of both parties. *See*  
20 FED.R.CIV.P. 73.

21 The final decision of the Commissioner denying benefits to the claimant is not supported  
22 by substantial evidence and free from legal error. *See Orn v. Astrue*, 495 F.3d 625, 630 (9<sup>th</sup> Cir.  
23 2007). Specifically, the ALJ improperly discounted the treating physician's opinion of  
24 disability. The case will be remanded for payment of benefits.

25  
26 PROCEDURAL HISTORY

27 On December 17, 2007, Matthews protectively filed an application for disability  
28 insurance benefits and supplemental security income. (Tr. 18, 118, 121) She alleged disability

1 beginning on August 1, 2007, due to insomnia, depression, ADHD, and migraines. (Tr. 144)  
2 Her claim was denied initially (Tr. 59-62) and upon reconsideration (Tr. 64-66). Matthews  
3 requested review and appeared with counsel at a hearing before Administrative Law Judge  
4 (ALJ) M. Kathleen Gavin on October 28, 2009. (Tr. 18, 24) In her decision, dated January 22,  
5 2010, the ALJ found Matthews was not disabled. (Tr. 18-24)

6 Matthews appealed, but the Appeals Council denied review making the decision of the  
7 ALJ the final decision of the Commissioner. (Tr. 5-7); *Bass v. Social Sec. Admin.*, 872 F.2d  
8 832, 833 (9<sup>th</sup> Cir. 1989). Matthews subsequently filed this action appealing the Commissioner's  
9 final decision. (Doc. 1); *see* 20 C.F.R. § 422.210(a). She filed her opening brief on December  
10 30, 2011. (Doc. 25). The Commissioner filed a responsive brief on March 14, 2012. (Doc. 28)

#### 11 12 Claimant's Work History and Medical History

13 Matthews worked as a bus driver for the City of Tucson from July of 1980 to her  
14 retirement in July of 2007. (Tr. 193) In her last three years on the job, Matthews missed a lot  
15 of work due to fatigue. (Tr. 196) She therefore took retirement as soon as she could. *Id.*

16 After her retirement, Matthews worked briefly in a health food store. (Tr. 196) She was  
17 fired after only three weeks, however, because "[she] was not catching on fast enough." (Tr.  
18 196) In her application for benefits, she alleged disability beginning on August 1, 2007, due  
19 to insomnia, depression, ADHD, and migraines. (Tr. 144)

20 In November of 2007, Matthews was examined by Eskild A. Peterson, M.D., in the  
21 Infectious Disease Clinic at the University of Arizona. (Tr. 325-26) Peterson examined  
22 Matthews' records from Drs. Carlson and Manthei and from the Mayo Clinic. *Id.* The records  
23 indicate previous work ups for Lyme serology. *Id.* They also indicate "evidence of Epstein-  
24 Barr virus in the past." *Id.* Peterson opined: "She, in all likelihood, qualifies for chronic fatigue  
25 syndrome based on the duration of symptoms and the negative work-up for all the causes of it."  
26 (Tr. 326) "She has had some mood swings, but not excessively so." *Id.* "She has the  
27 migraines." *Id.* He concluded: "Based on the above, I am not sure I have much to add except  
28 that I believe that she fulfills the CDC criteria for chronic fatigue syndrome per se." *Id.*

1 The record also contains treatment notes from the psychologist, Linda Burns Kynaston,  
2 Ph.D. (Tr. 455, 412-24) In February of 2008, Kynaston offered the following diagnosis: Axis  
3 I: Major Depression, Recurrent, Severe (296.33), Generalized Anxiety Disorder (300.02);  
4 Anxiety Due to an Illness (293.89), ADHD (314.01); Axis II: Borderline Personality Disorder  
5 (301.83); Axis III: Chronic Fatigue Syndrome, Migraines, Chronic Sinusitis; Axis IV: Housing,  
6 Occupational, Familial; Axis V: GAF 50, Last Year, 45. (Tr. 421) Kynaston opined that during  
7 this time, “Ms. Matthews was unable to work due to the severe and unpredictable fatigue,  
8 memory and concentration problems, mood lability, and anxiety related to the symptoms.” (Tr.  
9 455)

10 In April of 2008, the non-examining state agency physician, Martha Goodrich, M.D.,  
11 reviewed the medical record and concluded Matthews suffers from “chronic sinusitis, allergic  
12 rhinitis, and migraines not requiring prescription medication.” (Tr. 374) Goodrich noted that  
13 Matthews’ primary care physician, Linda Granath, M.D., and a rheumatologist diagnosed  
14 Chronic Fatigue Syndrome. (Tr. 375) Nevertheless, she discounted their findings as “not  
15 supported by the objective MER<sup>1</sup>, nor is it credible based on the inconsistencies between the  
16 state opinions and documentation in the MER.” (Tr. 375)

17 In May of 2008, Kathleen Prouty, Ph.D., administered a psychological evaluation for the  
18 disability determination service. (Tr. 377-382) Prouty’s diagnostic impression reads as follows:  
19 Axis I: Adjustment Disorder; Axis II: No Current Diagnosis; Axis III: Hyperlipidemia,  
20 Migraines, Chronic Sinusitis, CFS; Axis V: GAF – 70. (Tr. 380) She concluded Matthews  
21 “does not have a mental impairment that would prevent avocational or vocational functioning.”  
22 (Tr. 380)

23 In May of 2008, non-examining state agency psychologist, Eugene Campbell, Ph.D.,  
24 reviewed the medical record and completed a Psychiatric Review Technique form. (Tr. 383)  
25 He documented an affective disorder, adjustment disorder. (Tr. 383, 386) He found no  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The acronym is not explained, but it appears to refer to the medical record.

1 functional limitations. (Tr. 393) He concluded Matthews' condition was "nonsevere." (Tr. 395)

2 In October of 2008, a non-examining state agency physician, Christopher Malone, M.D.,  
3 reviewed the record and affirmed the report earlier submitted by Martha Goodrich. (Tr. 435)

4 The record also contains treatment notes from Matthews' primary care physician, Linda  
5 Granath, M.D., from approximately April of 2008 to August of 2009. (Tr. 397-410; 425-434;  
6 437-454; 464-484) In August of 2009, Granath offered the following summary diagnosis:  
7 "Anxiety, ADD, Migraine [Headaches], Chronic Fatigue Syndrome, [and] Malaise." (Tr. 459-  
8 463) (capitalization modified) Granath opined that Matthews could sit and stand/walk for less  
9 than two hours in an 8-hour day. (Tr. 461) She would need to walk around after 20 minutes.  
10 (Tr. 461) She could lift and carry 10 pounds occasionally. (Tr. 462) Granath opined that  
11 Matthews' ability to tolerate work stress was so impaired that she was "[i]ncapable of even 'low  
12 stress' jobs." (Tr. 460)

13 On October 28, 2009, Matthews appeared with counsel at a hearing before ALJ M.  
14 Kathleen Gavin. (Tr. 34) At the time of the hearing, Matthews was 55 years old and a high  
15 school graduate. (Tr. 37, 51)

16 Matthews testified that she worked for more than 20 years as a bus driver for the city.  
17 (Tr. 38) She retired in 2007 because she was missing so much work she was afraid she would  
18 be fired. (Tr. 38) She was "just really tired and falling asleep at the wheel." (Tr. 38) Matthews  
19 explained she sometimes sleeps four or five days at a time but still does not feel rested. (Tr. 38-  
20 39) She stated: "[O]ften, I will feel like I'm coming down with the flu, and ache all over, and  
21 have sore throats." (Tr. 39)

22 After she retired, Matthews tried to work part-time as a cashier, but she was fired  
23 because she couldn't remember things. (Tr. 48)

24 On a typical day, Matthews has a hard time waking up. (Tr. 43) She makes coffee and  
25 lays around for an hour or two generating the energy to get up. (Tr. 43) On good days, she can  
26 do some things, but then she has to rest. (Tr. 43) She takes the medications Zoloft, Claritin, and  
27 Ritalin. (Tr. 44) She manages her own money, but she says, "I'm spacey, and I make a lot of  
28

1 mistakes.” (Tr. 45) She does her own grocery shopping when she has the energy. (Tr. 45) She  
2 tried exercises and yoga, but she stopped because it made her feel sick again. (Tr. 46)

3 Before she was sick, she used to hike, do swing dancing, and go out to movies and clubs.  
4 (Tr. 47) She cannot do those activities anymore. (Tr. 47) She still is able to make jewelry,  
5 however. (Tr. 47)

6 The vocational expert, Victoria Ray, testified that driving a bus is medium work. (Tr.  
7 51) Assuming Matthews could perform only light work, she could not perform her past relevant  
8 work as a bus driver (Tr. 51) She could, however, work as a ticket taker, assembler, or  
9 inspector. (Tr. 52)

10 Ray further testified that someone who could sit and stand for less than two hours in an  
11 8-hour day and could lift only 10 pounds occasionally, as reported by Granath, could not work.  
12 (Tr. 52)

13 The record also contains third party function reports from Matthews’ friend, Kim Fry,  
14 her brother, Michael Matthews, and her sister-in-law, Mary Matthews. (Tr. 221-229; 230-238;  
15 239-247) Fry reports that she and Matthews went out regularly, but lately Matthews has been  
16 too tired to socialize. (Tr. 225-226) Michael Matthews reports that Matthews has great  
17 difficulty taking care of herself and keeping her apartment clean. (Tr. 230) Mary Matthews  
18 reports that Matthews used to be much more social, but she now does very little outside of her  
19 home. (Tr. 243)

#### 20 21 CLAIM EVALUATION

22 Social Security Administration (SSA) regulations require that disability claims be  
23 evaluated pursuant to a five-step sequential process. 20 C.F.R. §§ 404.1520, 416.920; *Baxter*  
24 *v. Sullivan*, 923 F.2d 1391, 1395 (9<sup>th</sup> Cir. 1991). The first step requires a determination of  
25 whether the claimant is engaged in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4),  
26 416.920(a)(4). If so, then the claimant is not disabled, and benefits are denied. *Id.*

27 If the claimant is not engaged in substantial gainful activity, the ALJ proceeds to step two  
28 which requires a determination of whether the claimant has a medically severe impairment or

1 combination of impairments. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). In making a  
2 determination at step two, the ALJ uses medical evidence to consider whether the claimant's  
3 impairment more than minimally limits or restricts his or her "physical or mental ability to do  
4 basic work activities." 20 C.F.R. §§ 404.1520(c), 416.920(c). If the ALJ concludes the  
5 impairment is not severe, the claim is denied. *Id.*

6       Upon a finding of severity, the ALJ proceeds to step three which requires a determination  
7 of whether the impairment meets or equals one of several listed impairments that the  
8 Commissioner acknowledges are so severe as to preclude substantial gainful activity. 20 C.F.R.  
9 §§ 404.1520(a)(4), 416.920(a)(4); 20 C.F.R. Pt. 404, Subpt. P, App.1. If the claimant's  
10 impairment meets or equals one of the listed impairments, then the claimant is presumed to be  
11 disabled, and no further inquiry is necessary. *Ramirez v Shalala*, 8 F.3d 1449, 1452 (9<sup>th</sup> Cir.  
12 1993). If the claimant's impairment does not meet or equal a listed impairment, evaluation  
13 proceeds to the next step.

14       The fourth step requires the ALJ to consider whether the claimant has sufficient residual  
15 functional capacity<sup>2</sup> (RFC) to perform past work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).  
16 If yes, then the claim is denied. *Id.* If the claimant cannot perform any past work, then the ALJ  
17 must move to the fifth step, which requires consideration of the claimant's RFC to perform  
18 other substantial gainful work in the national economy in view of claimant's age, education, and  
19 work experience. 20 C.F.R. §§ 404.1520(a)(4); 416.920(a)(4).

20       In determining whether the claimant retains the ability to perform other work, the ALJ  
21 may refer to the Medical Vocational Guidelines ("the grids") promulgated by the SSA. *See* 20  
22 C.F.R. Pt. 404, Subpt. P, App.2; *Desrosiers v. Secretary of Health and Human Services*, 846  
23 F.2d 573, 576-577 (9<sup>th</sup> Cir. 1988). The grids categorize jobs according to their exertional  
24 requirements such as sedentary work, light work, or medium work. *Tackett v. Apfel*, 180 F.3d  
25 1094, 1101 (9<sup>th</sup> Cir. 1999). The grids calculate whether or not the claimant is disabled based

---

26  
27  
28       <sup>2</sup> Residual functional capacity is defined as that which an individual can still do despite his or  
her limitations. 20 C.F.R. §§ 404.1545, 416.945.

1 on the claimant's exertional ability, age, education, and work experience. *Id.* The grids are a  
2 valid basis for denying claims where they completely and accurately describe the claimant's  
3 abilities and limitations. *Id.* at 1101-02. If the claimant has only exertional limitations, the  
4 claim may be resolved based only on the grids. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1115  
5 (9<sup>th</sup> Cir. 2006).

6 If the claimant has significant non-exertional limitations, the grids do not apply. *Penny*  
7 *v. Sullivan*, 2 F.3d 953, 958-959 (9<sup>th</sup> Cir.1993). "Non-exertional limitations are limitations that  
8 do not directly affect a claimant's strength." *Burkhart v. Bowen*, 856 F.2d 1335, 1340 (9<sup>th</sup> Cir.  
9 1988). Mental limitations, for example, are non-exertional. *Id.* at 1340-41. If significant non-  
10 exertional limitations prevent the claimant from performing the full range of work in any  
11 exertional category, the ALJ must take the testimony of a vocational expert to deny the claim.  
12 *Id.* at 1341.

#### 13 14 The ALJ's Findings

15 At step one of the disability analysis, the ALJ found Matthews "has not engaged in  
16 substantial gainful activity since August 1, 2007, the alleged onset date." (Tr. 20). At step two,  
17 she found Matthews "has the following medically determinable impairments: migraines and  
18 adjustment disorder." (Tr. 20). She determined, however, that Matthews does not have a *severe*  
19 impairment or combination of impairments. (Tr. 20) Accordingly, she concluded Matthews is  
20 not disabled. (Tr. 24).

#### 21 22 STANDARD OF REVIEW

23 An individual is entitled to disability benefits if he or she demonstrates, through  
24 medically acceptable clinical or laboratory standards, an inability to engage in substantial  
25 gainful activity due to a physical or mental impairment that can be expected to last for a  
26 continuous period of at least twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). "[A]  
27 claimant will be found disabled only if the impairment is so severe that, considering age,  
28 education, and work experience, that person cannot engage in any other kind of substantial



1 gainful work which exists in the national economy.” *Penny v. Sullivan*, 2 F.3d 953, 956 (9<sup>th</sup> Cir.  
2 1993) (quoting *Marcia v. Sullivan*, 900 F.2d 172, 174 (9<sup>th</sup> Cir. 1990)).

3 The findings of the Commissioner are meant to be conclusive. 42 U.S.C. §§ 405(g),  
4 1383(c)(3). The decision to deny benefits “should be upheld unless it contains legal error or is  
5 not supported by substantial evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9<sup>th</sup> Cir. 2007).  
6 Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept  
7 as adequate to support a conclusion.” *Id.* It is “more than a mere scintilla but less than a  
8 preponderance.” *Id.*

9 “Where evidence is susceptible to more than one rational interpretation, the ALJ’s  
10 decision should be upheld.” *Orn*, 495 F.3d at 630. “However, a reviewing court must consider  
11 the entire record as a whole and may not affirm simply by isolating a specific quantum of  
12 supporting evidence.” *Id.*

13 In evaluating evidence to determine whether a claimant is disabled, the opinion of a  
14 treating physician is entitled to great weight. *Ramirez v. Shalala*, 8 F.3d 1449, 1453-54 (9<sup>th</sup> Cir.  
15 1993). The Commissioner may reject a treating physician’s uncontradicted opinion only if he  
16 sets forth clear and convincing reasons for doing so. *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir.  
17 1995). If the treating physician’s opinion is contradicted by another doctor, the Commissioner  
18 may reject that opinion only if he provides specific and legitimate reasons supported by  
19 substantial evidence in the record. *Lester*, 81 F.3d at 830. No distinction is drawn “between  
20 a medical opinion as to a physical condition and a medical opinion on the ultimate issue of  
21 disability.” *Rodriguez v. Bowen*, 876 F.2d 759, 761 n.7 (9<sup>th</sup> Cir. 1989).

22 “The opinion of an examining physician is, in turn, entitled to greater weight than the  
23 opinion of a non[-]examining physician.” *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1996).  
24 “[T]he Commissioner must provide ‘clear and convincing’ reasons for rejecting the  
25 uncontradicted opinion of an examining physician.” *Id.* “[T]he opinion of an examining doctor,  
26 even if contradicted by another doctor, can only be rejected for specific and legitimate reasons  
27 that are supported by substantial evidence in the record.” *Id.* at 830-31.



1 “Where medical reports are inconclusive, questions of credibility and resolution of  
2 conflicts in the testimony are functions solely of the [Commissioner].” *Magallanes*, 881 F.2d  
3 747, 751 (9<sup>th</sup> Cir. 1989) (punctuation omitted). The Commissioner’s finding that a claimant is  
4 less than credible, however, must have some support in the record. *See Light v. Social Security*  
5 *Administration*, 119 F.3d 789 (9<sup>th</sup> Cir. 1997).

6 The ALJ need not accept the claimant’s subjective testimony of disability, but if she  
7 decides to reject it, “she must provide specific, cogent reasons for the disbelief.” *Lester*, 81  
8 F.3d at 834. “Unless there is affirmative evidence showing that the claimant is malingering, the  
9 Commissioner’s reasons for rejecting the claimant’s testimony must be clear and convincing.”  
10 *Id.* “General findings are insufficient; rather, the ALJ must identify what testimony is not  
11 credible and what evidence undermines the claimant’s complaints.” *Id.*

### 12 13 DISCUSSION

14 The ALJ committed legal error when she improperly discounted the opinion of  
15 Matthews’ treating physician, Linda Granath, M.D., who diagnosed Matthews with disabling  
16 Chronic Fatigue Syndrome. This error resulted in the ALJ’s improper finding at step two of the  
17 disability analysis that Matthews does not suffer from a severe impairment. *See Orn v. Astrue*,  
18 495 F.3d 625, 630 (9<sup>th</sup> Cir. 2007).

19 “Because treating physicians are employed to cure and thus have a greater opportunity  
20 to know and observe the patient as an individual, their opinions are given greater weight than  
21 the opinions of other physicians.” *Smolen*, 80 F.3d at 1285. The Commissioner may reject the  
22 treating physician’s uncontradicted<sup>3</sup> opinion only if the Commissioner sets forth clear and  
23

---

24 <sup>3</sup> The record contains a report from the non-examining state agency physician, Martha  
25 Goodrich, M.D., who reviewed the medical record and concluded Matthews does not suffer from  
26 Chronic Fatigue Syndrome. (Tr. 375) The ALJ, however, did not mention this report in her decision  
27 discounting Granath’s opinions. (Tr. 375) Accordingly, the court applies the “clear and convincing”  
28 test. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9<sup>th</sup> Cir. 2003); *Pinto v. Massanari*, 249 F.3d 840,  
847-48 (9<sup>th</sup> Cir. 2001). The court’s conclusions would not change if the “specific and legitimate” test  
were applied instead.

1 convincing reasons for doing so. *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir.1996);  
2 *Magallanes*, 881 F.2d at 751. “This can be done by setting out a detailed and thorough  
3 summary of the facts and conflicting clinical evidence, stating [her] interpretation thereof, and  
4 making findings.” *Orn*, 495 F.3d at 632. “The ALJ must do more than offer [her]  
5 conclusions.” *Id.* “[She] must set forth [her] own interpretations and explain why they, rather  
6 than the doctor[’s], are correct.” *Id.* If the treating source’s opinion “is well-supported by  
7 medically and acceptable clinical and laboratory diagnostic techniques and is not inconsistent  
8 with the other substantial evidence in [the] case record,” it must be given “controlling weight.”  
9 20 C.F.R. § 404.1527(c)(2); § 416.927(c)(2).

10 In this case, Granath diagnosed Matthews with disabling Chronic Fatigue Syndrome.  
11 The ALJ rejected her diagnosis finding that Matthews suffers only from “migraines and  
12 adjustment disorder.” (Tr. 20) The ALJ’s stated reasons for doing so do not constitute clear  
13 and convincing evidence.

14 The ALJ conceded that the medical record contains subjective reports of fatigue, but she  
15 discounted Granath’s diagnosis because there was a lack of objective physical evidence  
16 supporting the diagnosis. (Tr. 22) She further stated that the diagnosis was “not supported by  
17 her treatment records and appear to be largely based on claimant’s subjective complaints. . . .”  
18 (Tr. 22)

19 The ALJ’s stated objections are not legally sufficient. “Merely to state that a medical  
20 opinion is not supported by enough objective findings” is not enough to constitute a “clear and  
21 convincing” reason for rejecting the uncontradicted opinion of a treating physician. *Rodriguez*  
22 *v. Bowen*, 876 F.2d 759, 762 (9<sup>th</sup> Cir.1989) (quoting *Embrey v. Bowen*, 849 F.2d 418, 421 (9<sup>th</sup>  
23 Cir.1988)) In fact, the ALJ’s stated objection does not even constitute a “specific and  
24 legitimate” reason, which is required to reject a treating physician’s contradicted opinions.  
25 *Embrey*, 849 F.2d at 421. “Disability may be proved by medically-acceptable clinical  
26 diagnoses, as well as by objective findings.” *Rodriguez*, 876 F.2d at 762 (quoting *Day v.*  
27 *Weinberger*, 522 F.2d 1154, 1156 (9<sup>th</sup> Cir.1975)). “To say that medical opinions are not  
28 supported by sufficient objective findings” does not give proper weight to the “subjective

1 elements” of the doctors’ diagnoses, which “are important and properly play a part in their  
2 medical evaluations.” *Embrey*, 849 F.2d at 422.

3 The ALJ’s criticism that Granath’s opinion is not supported by objective physical  
4 evidence is particularly troubling given Matthews’ diagnosis of Chronic Fatigue Syndrome  
5 (CFS). CFS is not diagnosed by objective laboratory tests. *See* (Tr. 459) (“There are no tests  
6 for these illnesses.”)

7 “CFS is a systemic disorder consisting of a complex of symptoms that may vary in  
8 incidence, duration, and severity.” SSR 99-2p. It manifests itself in symptoms such as  
9 impairment of short-term memory or concentration, sore throat, tender lymph nodes, muscle  
10 pain, joint pain without swelling or redness, headaches, unrefreshing sleep, post-exertional  
11 malaise, muscle weakness, swollen underarm glands, sleep disturbances, visual difficulties,  
12 lightheadedness, increased fatigue with prolonged standing, neurocognitive problems such as  
13 difficulty comprehending and processing information, fainting, dizziness, and mental problems  
14 such as depression, irritability or anxiety. *Id.* It results in few, if any, objective signs. *Id.*  
15 “[A]n extended medical history of ‘nothing-wrong’ diagnoses is not unusual for a patient who  
16 is ultimately found to be suffering from the disease.” *Rose v. Shalala*, 34 F.3d 13, 18 (1<sup>st</sup> Cir.  
17 1994).

18 Because of the unusual nature of Chronic Fatigue Syndrome and its lack of objective  
19 physical signs, the ALJ’s criticism that Granath’s diagnosis is unsupported by clinical findings  
20 or relies unduly on the patient’s subjective complaints is not well taken. *See, e.g., Reddick v.*  
21 *Chater*, 157 F.3d 715, 725-726 (9<sup>th</sup> Cir. 1998) (“The ALJ’s reasoning runs counter to the CDC’s  
22 published framework for evaluating and diagnosing CFS.”).

23 The ALJ also complains that Granath’s treatment records were compiled with  
24 “claimant’s input and her observations.” (Tr. 22) She seems to find this objectionable, but she  
25 does not explain why. There is no indication in the record that Matthews is malingering. (Tr.  
26 459) Accordingly, it is not unusual or suspicious that the medical records should reflect the  
27 input, observations, and symptoms as reported by the patient.  
28

Granath's opinion is supported by Peterson, who also diagnosed Chronic Fatigue Syndrome. (Tr. 325-26) Peterson is not a treating physician, but his opinions are nevertheless entitled to special deference because he is a specialist in infectious diseases. *Id.* "[T]he opinions of a specialist about medical issues related to his or her area of specialization are given more weight than the opinions of a nonspecialist." *Smolen*, 80 F.3d at 1285; *See* 20 C.F.R. §§ 404.1527(c)(5), 416.927(c)(5).

The ALJ also states that Granath's findings are not supported by her treatment record, but she gives no specifics. Without specifics, analysis of the ALJ's objection is particularly problematic. *See Reddick v. Chater*, 157 F.3d 715, 725 n. 7 (9<sup>th</sup> Cir. 1998) ("In *Embrey* we rejected the ALJ's conclusory statements rejecting the treating doctor's opinion on disability . . . .").

Moreover, contrary to the ALJ's assertion, the medical record in this case supports Granath's diagnosis. Matthews has a history of memory deficits, muscle weakness, headaches, unrefreshing sleep, and anxiety, all of which are consistent with CFS. (Tr. 459)

The Commissioner, on the other hand, argues that evidence in the record supports the ALJ. (Doc. 28) He argues Granath's opinion of disability is inconsistent with her findings that Matthews had "full cervical spine ranges of motion; clear lungs with normal respiration depth and rhythm; normal motor functioning bilaterally; and normal gait and stance." (Doc. 28, p. 18) He further notes that the decision of the ALJ is supported by the opinions of the non-examining state agency physicians, Goodrich and Maloney. (Doc. 28, p. 14) Unfortunately, the ALJ did not make these arguments in her decision, and therefore this court may not consider them. *Connett v. Barnhart*, 340 F.3d 871, 874 (9<sup>th</sup> Cir. 2003); *Pinto v. Massanari*, 249 F.3d 840, 847-48 (9<sup>th</sup> Cir. 2001).

The ALJ erred when she discounted the opinions of Matthews' treating physician, Granath. Accordingly, Granath's opinions should be credited as a matter of law. *Benecke v. Barnhart*, 379 F.3d 587, 593 (9<sup>th</sup> Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1996) ("Where the Commissioner fails to provide adequate reasons for rejecting the opinion of a treating or examining physician, we credit that opinion as a matter of law.").

1 “Where we conclude that a claimant’s testimony or a doctor’s opinion should have been  
2 credited and, if credited, would have led to a finding of eligibility, we may order the payment  
3 of benefits.” *Regennitter v. Commissioner*, 166 F.3d 1294, 1300 (9<sup>th</sup> Cir. 1999); *see also*  
4 *Ghokassian v. Shalala*, 41 F.3d 1300, 1304 (9<sup>th</sup> Cir. 1994) (remanding for payment of benefits  
5 where the Secretary did not provide adequate reasons for disregarding the treating physician’s  
6 opinion). In this case, the ALJ improperly discounted the opinion of Matthews’ treating  
7 physician. Crediting this opinion leads necessarily to a finding of disability. *See* (Tr. 52, 459-  
8 463).

9 There are no outstanding issues to be resolved. Remand of the case would serve no  
10 useful purpose. *See Smolen v. Chater*, 80 F.3d 1273, 1292 (9<sup>th</sup> Cir. 1996) (“We may direct an  
11 award of benefits where the record has been fully developed and where further administrative  
12 proceedings would serve no useful purpose.”). A finding of disability should be entered. *See*  
13 *also Benecke v. Barnhart*, 379 F.3d 587, 595 (9<sup>th</sup> Cir. 2004) (“Allowing the Commissioner to  
14 decide the issue again would create an unfair ‘heads we win; tails, let’s play again’ system of  
15 disability benefits adjudication.”).

16  
17 IT IS ORDERED that the final decision of the Commissioner is reversed. The case is  
18 remanded for payment of benefits.

19 The Clerk of the Court is directed to prepare a judgment and close this case.

20  
21 DATED this 12<sup>th</sup> day of July, 2012.

22  
23 

24 Leslie A. Bowman  
25 United States Magistrate Judge  
26  
27  
28